
From: Jacobs, James D. [James.D.Jacobs@BAKERNET.com]
Sent: Tuesday, December 04, 2007 6:20 PM
To: Schaffer, Hyman L.
Cc: Jacobs, Fran M.; Damiano, Brian J.; Ballard, Marcella; Basinger, John A.; Gasparo, Frank M
Subject: Response to Nov. 2 letter of Hyman Schaffer to James D. Jacobs

Dear Hyman,

Through Consist's witnesses and filings Consist has claimed that we have not responded to your November 2, 2007 letter to me and purporting to seek additional information regarding Consist's breaches of the Agreement. To the extent responses were appropriate our responses are already clear in the record. Nevertheless, as a courtesy we address the points that your November 2 letter raises.

Paragraphs 1 and 2 of the letter argue points, responses to which are the subject of the papers we recently filed for the December 12 trial. We deem it unnecessary to repeat those responses.

The last paragraph on your first page contends that your client has cured its breaches regarding insufficient disclosure and promotion of our clients' copyrights and trademarks. Although we do not believe that your client has cured these breaches, we no longer are pursuing these breaches at the December 12 trial. Our clients reserve the right to again assert these breaches, assuming that they are not cured, at a later date. Similarly, our clients are not pursuing at the December 12 trial those breaches that you discuss on page 3 of your letter, paragraphs 2 and 3, but reserve the right to assert these breaches, assuming that they are not cured, at a later date.

Your client's wrongful registration of our clients' marks is a breach that we will pursue, if appropriate, at the December 12 trial. The cure of that breach is obvious: your client should forthwith assign the subject registrations to Software AG.

Likewise, as is evident from the papers we recently filed our client intends to pursue the breaches that you note in the last two paragraphs on page 2 and the first paragraph on page 3. Once again the responses to your arguments are found in our recently filed papers.

Please bring to our attention any points in your November 2 letter that we did not address above.

Very truly yours,

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